

1994

## State of Utah v. Mills : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
Plaintiff/Appellee, : Case No. 940324-CA  
v. :  
DAVID L. MILLS, : Priority No. 2  
Defendant/Appellant. :

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BRIEF OF APPELLEE

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APPEAL FROM CONVICTIONS FOR ATTEMPTED RIOT, A  
CLASS A MISDEMEANOR, UNDER UTAH CODE ANN. §§  
76-9-101(1) & (3), 76-2-202 AND 76-4-  
102(4) (1994) AND ATTEMPTED INJURY TO A JAIL,  
A CLASS A MISDEMEANOR, UNDER UTAH CODE ANN.  
§§ 76-8-418, 76-2-202, 76-4-102 (4) (1994),  
ENTERED IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR SANPETE COUNTY, UTAH, THE  
HONORABLE DON V. TIBBS, PRESIDING.

UTAH CO:

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**FILED**

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COURT OF APPEALS

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## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES. . . . .	ii
JURISDICTION AND NATURE OF PROCEEDINGS. . . . .	1
STATEMENT OF ISSUES PRESENTED AND STANDARD OF REVIEW. . . . .	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES . . . . .	2
STATEMENT OF THE CASE . . . . .	2
STATEMENT OF THE FACTS. . . . .	3
SUMMARY OF ARGUMENT . . . . .	3
ARGUMENT	
POINT I    DEFENDANT AFFIRMATIVELY DECLINED TO SPECIFY ANY RULE 11 CHALLENGE TO HIS GUILTY PLEAS BELOW AND HAS FAILED TO ARTICULATE A PLAIN ERROR OR EXCEPTIONAL CIRCUMSTANCE EXCUSING HIS WAIVER IN HIS OPENING BRIEF; ACCORDINGLY, DEFENDANT'S RULE 11 CHALLENGE HAS NOT BEEN PRESERVED FOR REVIEW ON DIRECT APPEAL . . . . .	4
POINT II    DEFENDANT DID NOT SHOW GOOD CAUSE, NOR DID THE TRIAL COURT ABUSE ITS DISCRETION IN REFUSING TO ALLOW WITHDRAWAL OF DEFENDANT'S GUILTY PLEAS . . . . .	9
<b>A.</b> Failure to Substantiate Claims of Coercion. . . . .	9
<b>B.</b> Failure to Marshal. . . . .	15
CONCLUSION. . . . .	17
ADDENDA	
Addendum    A - Motion to Withdraw Guilty Pleas	
Addendum    B - Transcript of Proceedings	
Addendum    C - Order Denying Motion	
Addendum    D - Statutes	

## TABLE OF AUTHORITIES

### CASES CITED

	Page
<u>State v. Brown</u> , 856 P.2d 358 (Utah App. 1993) . . . . .	5
<u>Bordenkircher v. Hayes</u> , 434 U.S. 357 (1978) . . . . .	14
<u>State v. Archambeau</u> , 820 P.2d 920 (Utah App. 1991) . . . . .	5
<u>State v. Brown</u> , 853 P.2d 851 (Utah 1992) . . . . .	6
<u>State v. Danh</u> , 516 N.W.2d 539 (Minn. 1994) . . . . .	13
<u>State v. Drobek</u> , 815 P.2d 724 (Utah App. 1991), <u>cert. denied</u> , 836 P.2d 1383 (Utah 1991?) . . . . .	16
<u>State v. Gallegos</u> , 738 P.2d 1040 (Utah 1987). . . . .	2
<u>State v. Gibbons</u> , 740 P.2d 1309 (Utah 1987) . . . . .	3, 4, 6, 8
<u>State v. Jennings</u> , 875 P.2d 566 (Utah App. 1994). . . . .	2, 5, 6, 8, 10
<u>State v. Larsen</u> , 828 P.2d 487 (Utah App. 1992), <u>aff'd</u> , 865 P.2d 1355 (Utah 1993) . . . . .	16
<u>State v. Lesley</u> , 672 P.2d 79, 82 (Utah 1983). . . . .	6
<u>State v. Moosman</u> , 794 P.2d 474 (Utah 1990) . . . . .	16
<u>State v. Pharris</u> , 798 P.2d 772 (Utah App.), <u>cert. denied</u> , 804 P.2d 1232 (Utah 1990) . . . . .	6
<u>State v. Price</u> , 837 P.2d 578 (Utah App. 1992) . . . . .	4
<u>State v. Sepulveda</u> , 842 P.2d 913 (Utah App. 1992) . . . . .	6
<u>State v. Solano</u> , 724 P.2d 17 (Ariz. 1986) . . . . .	13
<u>State v. Thorup</u> , 841 P.2d 746 (Utah App. 1992), <u>cert. denied</u> , 853 P.2d 897 (Utah 1993) . . . . .	2, 9
<u>State v. Trujillo-Martinez</u> , 814 P.2d 596, 599 (Utah App. 1991). . . . .	2
<u>State v. Valencia</u> , 776 P.2d 1332 (Utah App. 1989) . . . . .	6
<u>United States v. Caro</u> , 997 F.2d 657 (9th Cir. 1993) . . . . .	12, 13, 14

<u>United States v. Castello</u> , 724 F.2d 813 (9th Cir.), <u>cert. denied</u> , 467 U.S. 1254 (1984)	14
<u>United States v. Wheat</u> , 813 F.2d 1399 (9th Cir. 1987), <u>aff'd</u> , 486 U.S. 153 (1988)	13

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-2-202 (1994)	2
Utah Code Ann. § 76-4-102 (1994)	2
Utah Code Ann. § 76-8-418 (1994)	2
Utah Code Ann. § 76-9-101 (1994)	1, 2
Utah Code Ann. § 78-2a-3 (1994)	2
Utah R. Crim. P. 11	2

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BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions for attempted riot, a class A misdemeanor, under Utah Code Ann. §§ 76-9-101(1) & (3), 76-2-202 and 76-4-102(4) (1994) and attempted injury to a jail, a class A misdemeanor, under Utah Code Ann. §§ 76-8-418, 76-2-202, 76-4-102(4) (1994).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (1994).

STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Did the trial court comply with the requirements of rule 11, Utah Rules of Criminal Procedure in accepting defendant's guilty pleas?

Defendant affirmatively declined to specify any particular rule 11 challenge to his guilty pleas in moving to withdraw the pleas below, nor has he argued exceptional circumstances or plain error on appeal. Accordingly, defendant's allegation of a rule 11 violation is waived, State v. Jennings,

875 P.2d 566, 570 (Utah App. 1994). See also State v. Gibbons, 740 P.2d 1309, 1311 (Utah 1987).

2. Did the trial court properly determine that defendant entered his guilty pleas voluntarily?

A guilty plea "'may be withdrawn only upon good cause shown and with leave of the [trial] court.'" State v. Thorup, 841 P.2d 746, 747 (Utah App. 1992) (quoting Utah Code Ann. § 77-13-6(2)(a) (1990)), cert. denied, 853 P.2d 897 (Utah 1993). "A 'withdrawal of plea of guilty is a privilege, not a right . . . [and] is within the sound discretion of the trial court.'" Id. (quoting State v. Gallegos, 738 P.2d 1040, 1041 (Utah 1987)). "On appeal the trial court's denial of a motion to set aside a guilty plea will not be disturbed 'unless it clearly appears that the trial court abused its discretion.'" Id. (quoting State v. Trujillo-Martinez, 814 P.2d 596, 599 (Utah App. 1991), cert. denied, 843 P.2d 516 (Utah 1992)).

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

**Utah R. Crim. Pro. 11 (e)** (attached as Addendum D).

#### STATEMENT OF THE CASE

Defendant was charged with riot, a third degree felony, in violation of Utah Code Ann. §§ 76-9-101(1) & (3) and 76-2-202 (1994), and injury to a jail, a third degree felony, in violation of Utah Code Ann. §§ 76-8-418 and 76-2-202 (1994) (R. 82-84).

Pursuant to a package plea bargain agreement, defendant and two codefendants plead to reduced charges: Defendant pled



guilty to attempted riot, a class A misdemeanor, and to attempted injury to a jail, also a class A misdemeanor (R. 194-97).

The trial court sentenced defendant to two concurrent one year terms (R. 210).

Defendant filed a motion to withdraw his guilty pleas on the ground that they were not voluntary (R. 215-16) (copies of defendant's motion, affidavit, and memorandum are attached as Addendum A). Following an evidentiary hearing on the matter, the trial court denied defendant's motion (R. 233-34) (a copy of the order is attached as Addendum C).

#### STATEMENT OF THE FACTS<sup>1</sup>

On August 9, 1993, five inmates, including defendant, at the Central Utah Correctional Facility (CUCF) refused a "rack in" order and started a riot (R. 4, 6). The inmates breached the secure section door to Cedar, Section I, and entered into the sallyport area around the control room (R. 4). Defendant participated in the riot by breaking out several cell door windows (R. 6). Total damage to the facility amounted to over \$36,000 (R. 4).

#### SUMMARY OF ARGUMENT

##### POINT I

This Court should not consider defendant's challenge to the trial court's compliance with rule 11, Utah Rules of Criminal Procedure, for the first time on direct appeal. Defendant has

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<sup>1</sup> As defendant's convictions resulted from his pleas of guilty rather than a trial on the merits, the facts are gleaned from the probable cause affidavit (R. 4-6).

not articulated a plain error, nor any other exceptional circumstance that would excuse his affirmative waiver of the issue in his opening brief. Accordingly, defendant's remedy, if any, must now be pursued under rule 65(B), Utah Rules of Civil Procedure.

## POINT II

Although defendant did raise a voluntariness challenge to his guilty pleas below, he failed to substantiate his allegations of coercion at the plea withdrawal hearing. Indeed, defendant admitted that neither of his codefendants ever threatened him to accept the package plea agreement. Accordingly, defendant's claims of coercion on appeal are unsupported by the record and fail to demonstrate that the trial court abused its discretion in refusing to allow withdrawal of the pleas.

## ARGUMENT

### POINT I

DEFENDANT AFFIRMATIVELY DECLINED TO SPECIFY ANY RULE 11 CHALLENGE TO HIS GUILTY PLEAS BELOW AND HAS FAILED TO ARTICULATE A PLAIN ERROR OR EXCEPTIONAL CIRCUMSTANCE EXCUSING HIS WAIVER IN HIS OPENING BRIEF; ACCORDINGLY, DEFENDANT'S RULE 11 CHALLENGE HAS NOT BEEN PRESERVED FOR REVIEW ON DIRECT APPEAL

"[O]rdinarily, [the reviewing court] will not entertain an issue first raised on appeal in the absence of exceptional circumstances or plain error." State v. Gibbons, 740 P.2d 1309, 1311 (Utah 1987); State v. Price, 837 P.2d 578, 580-81 (Utah App. 1992). The waiver rule applies to constitutional issues as well.

State v. Archambeau, 820 P.2d 920, 922 (Utah App. 1991). The reasoning behind the waiver rule was stated by this Court in State v. Brown:

The purpose of requiring a properly presented objection is to 'put[] the judge on notice of the asserted error and allow[] the opportunity for correction at that time in the course of the proceeding.' The trial court is considered 'the proper forum in which to commence thoughtful and probing analysis' of issues. Failing to argue an issue and present pertinent evidence in that forum denies the trial court 'the opportunity to make any findings of fact or conclusions of law' pertinent to the claimed error.

856 P.2d 358, 359-60 (Utah App. 1993) (citations omitted).

In the trial court defendant moved to withdraw his guilty pleas on the sole ground that his "pleas were not voluntary[,] but were entered to avoid retaliation from his [c]o-[d]efendants" (R. 215-16), see Addendum A.

On appeal, defendant raises the additional argument that his pleas were taken in violation of rule 11, Utah Rules of Criminal Procedure, claiming that the record fails to indicate that he waived his constitutional right against self-incrimination, or that he understood the nature and elements of the offenses to which he pled. Br. of App. at 26. However, defendant has not alleged plain error or any exceptional circumstance that would excuse the obvious waiver of his rule 11 challenge. State v. Jennings, 875 P.2d 566, 570 (Utah App. 1994) (declining to address rule 11 challenge on appeal because defendant "failed" to raise the issue below and "[did] not assert either exceptional circumstances or plain error on appeal"). See

also State v. Sepulveda, 842 P.2d 913, 917-18 & n.5. (Utah App. 1992) (declining to review a scope of detention challenge first raised on appeal and about which the defendant neither argued exceptional circumstances nor plain error); cf. State v. Brown, 853 P.2d 851, 853-54 (Utah 1992) (disavowing the "liberty interest" where used for the purpose of carving out an additional exception to the traditional plain error standard).

Rather, the "Standard of Review" portion of defendant's brief refers generally to State v. Pharris, 798 P.2d 772, 774 (Utah App.), cert. denied, 804 P.2d 1232 (Utah 1990), and State v. Valencia, 776 P.2d 1332, 1334 (Utah App. 1989), for the broad proposition that the Court will consider a rule 11 challenge for the first time on appeal. Br. of App. at 3. While Pharris and Valencia are less than clear concerning an appellant's burden to assert plain error or exceptional circumstances to excuse waiver, the Court's later Jennings decision is clear as to those requirements and is also consistent with the Utah's well established waiver rule. 875 P.2d at 570. See also Gibbons, 740 P.2d at 1311 (where defendant had not yet moved to withdraw guilty plea, supreme court remanded for that purpose, recognizing that disposition was "consonant" with its "policy of allowing trial judges to have the opportunity to address an alleged error" (citing State v. Lesley, 672 P.2d 79, 82 (Utah 1983))). The Court should refuse to consider the trial court's rule 11 compliance for the first time on direct appeal.

Further, the record does not support an inference that there was any reason unknown or unavailable to defendant that would have prevented him from raising these rule 11 challenges at the plea withdrawal hearing. To the contrary, defense counsel affirmatively declined to specify any particular rule 11 challenge:

[DEFENSE COUNSEL]: One other item, Your Honor. At this time we do not wish to address a strict compliance requirements [sic] with the Rule 11[,] UTAH RULES OF CRIMINAL PROCEDURE. However, we would like to reserve that procedure, if this ruling is [sic] adverse to us today.

THE COURT: Adverse what issue? Tell me what you're talking about. Get specific. You claim I didn't comply with Rule 11?

[DEFENSE COUNSEL]: I don't want to claim that right now, but I would like to reserve that, Your Honor.

THE COURT: Well, you were present. Didn't I ask you at one time if there was any reason why I should not sentence them?

[DEFENSE COUNSEL]: Yes, you did, Your Honor.

THE COURT: You told me there was no reason; isn't that what you told me?

[DEFENSE COUNSEL]: Yes, I believe I did.

THE COURT: Now you don't want to be bound by that.

[DEFENSE COUNSEL]: No. I don't want to be bound by whether--

THE COURT: All right. Anything else?

[DEFENSE COUNSEL]: No.

(Transcript of withdrawal hearing, May 4, 1994, PWTr. 16-17) (a copy of the complete transcript is attached as Addendum B).<sup>3</sup>

In light of the above exchange, this is not a case, or a circumstance, where the Court should depart from Utah's well established waiver policy. See Jennings, 875 P.2d at 570; Gibbons, 740 P.2d at 1311. The Court's recent affirmation of the waiver rule's applicability to rule 11 challenges in Jennings, casts considerable doubt on the precedential weight, if any, to be accorded Pharris and Valencia. Moreover, to consider defendant's rule 11 challenge for the first time on appeal, would be to reward defense counsel's<sup>4</sup> misuse of Utah's judicial resources. Indeed, had the issue been timely raised and argued to the trial court, it is not clear that the trial court would have found rule 11 compliance at the time the guilty plea was entered. See (Transcript of Jury Trial, March 21, 1994, JTr. at 28-36). Thus, defendant may well have been afforded the opportunity to withdraw his guilty pleas at the plea withdrawal hearing. By expressly reserving the argument below, defense counsel essentially by-passed a critical stage of the judicial process and jumped straight to this Court for a first time airing of his rule 11 allegations. Such wasteful strategy should not be condoned. Accordingly, because defendant failed to raise the

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<sup>3</sup> Notwithstanding defense counsel's express reservation of the issue, in its Order refusing to allow withdrawal, the trial court found that it had in fact complied with rule 11 in accepting defendant's pleas (R. 234), see Addendum C.

<sup>4</sup> Defendant's appellate counsel also represented him at the plea taking, and plea withdrawal proceedings below (R. 23).

issue below and asserts neither plain error, nor an exceptional circumstance argument on appeal, this Court should not reach this issue. Defendant's remedy, if any, now lies in a post-conviction writ under rule 65(B), Utah Rules of Civil Procedure.

## POINT II

DEFENDANT DID NOT SHOW GOOD CAUSE, NOR DID THE TRIAL COURT ABUSE ITS DISCRETION IN REFUSING TO ALLOW WITHDRAWAL OF DEFENDANT'S GUILTY PLEAS

As noted above, defendant moved to withdraw his guilty pleas on the sole ground that they were involuntary (R. 215-16), see Addendum A. Following an evidentiary hearing, the trial court denied defendant's motion, finding that defendant had failed to demonstrate "good cause" for withdrawal (R. 234), see Addendum C. Defendant's claims of coercion on appeal are unsubstantiated and fail to demonstrate that the trial court abused its discretion in so ruling. State v. Thorup, 841 P.2d 746, 747 (Utah App. 1992), cert. denied, 853 P.2d 897 (Utah 1993).

### **A. Failure to Substantiate Claims of Coercion**

Defendant's motion to withdraw claimed that he involuntarily pled guilty because he wanted to "avoid retaliation from his [c]o-defendants" with whom he had been offered a "package" plea agreement (R. 215-16), see Addendum A. The package plea agreement required that all codefendant's plead guilty to reduced charges, or, alternatively, that all codefendants go to trial. Id. Defendant's accompanying

affidavit alleged that he felt under "extreme pressure" to accept the agreement and that "[i]f he had not accepted the plea bargain, [he] *could* have been exposed to physical and emotional retaliation from one of [his] [c]o-defendants" (R. 217-18), see Addendum A (emphasis added).

At the evidentiary hearing, defendant claimed that he was initially unwilling to accept the package plea agreement, but that he later acquiesced because he did not feel he would get a fair trial (PWTr. 6), see Addendum B. Defendant was concerned that the jury would be biased against him (PWTr. 6), see Addendum B. He also did not want to be tried with his codefendants (PWTr. 6-7), see Addendum B.<sup>5</sup> Defendant then alleged that he felt pressure from the "court attorney" and codefendants to accept the package deal (PWTr. 6), see Addendum B. However, defendant admitted that he did not tell the trial court that his pleas were involuntary:

We [defendant and codefendants] were all sitting right there [in court]. Everybody was just like it is right now. I mean if I would have said that, it would have been just the same as me saying no anyway.

(PWTr. 8), see Addendum B.

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<sup>5</sup> The trial court denied defendant's motion to sever his trial from that of codefendants following the preliminary hearing (Transcript of preliminary hearing, January 5, 1994, PHTr. at 90-91). To the extent defendant is asserting that the trial court's denial of his severance motion somehow rendered his subsequent guilty pleas involuntary, see Br. of App. at 32-33, it is waived for failure to allege this below. Jennings, 875 P.2d at 570. Defendant has not articulated a plain error or other exceptional circumstance excusing the waiver. Id.



On cross-examination, defendant reiterated that he had not informed the trial court, or defense counsel, that he had been threatened, or that he feared retaliation if he refused to accept the package plea agreement (PWTr. 9-10), see Addendum B. More importantly, defendant admitted that neither codefendant had ever threatened him to go along with the plea agreement (PWTr. 10), see Addendum B.

On redirect, defendant claimed that his feelings of coercion derived from an "unsaid thing. You just--just you know. You just know" (PWTr. 10), see Addendum B. Defendant again acknowledged that he had never been threatened by his codefendants (PWTr. 11), see Addendum B.

Codefendant Jeffery Eaton's testimony added nothing to defendant's claims of coercion. Eaton acknowledged that he felt it was in his best interest to accept the plea agreement, and that he knew he would not be able to do so if the agreement was rejected by his codefendants (PWTr. 12), see Addendum B. Eaton denied however, that he had ever threatened defendant with bodily injury or any other type of retaliation if defendant did not accept the package deal (PWTr. 12), see Addendum B.

Codefendant Michael Land similarly testified. Like Eaton, Land believed the plea agreement was in his best interests, particularly after considering the potential jury roster (PWTr. 14), see Addendum B. Land also denied having ever threatening defendant (PWTr. 15), see Addendum B.

Defense counsel made no argument elaborating on defendant's allegations of coercion. Rather, as previously noted, defense counsel merely indicated his intention to reserve any rule 11 challenge to the validity of the pleas until after the court had ruled on the voluntariness issue (PWTr. 16-17), see Addendum B.

Based on the above, the trial court denied defendant's request to withdraw his guilty pleas, finding "that there were not any threats made to the [d]efendant from co-defendants [sic] in this case in order to obtain his plea" (R. 234), see Addendum C.

Notwithstanding, on appeal to this Court, defendant argues that his pleas were involuntarily entered as a consequence of the package deal nature of the plea agreement. Br. of App. at 29-36. In so arguing, defendant places primary reliance on United States v. Caro, 997 F.2d 657 (9th Cir. 1993). In Caro, the government offered a package plea agreement to four codefendants. Caro subsequently sought to withdraw his plea on the ground that his codefendants had pressured him to agree. Id. at 659. The trial court denied Caro's motion *without benefit of an evidentiary hearing on the matter*. Id. This fact distinguishes Caro from the instant facts and undermines defendant's reliance thereon.

On appeal, the United States Court of Appeals for the Ninth Circuit determined that the prosecutor's description of the plea agreement in the trial court had been so ambiguous that it

was impossible to determine whether the trial court was alerted to the package nature of the deal. Caro, 997 F.2d at 659. Recognizing that a package deal plea agreement is not per se impermissible, the Ninth Circuit clarified its view that a trial court should make a more careful voluntariness inquiry under that circumstance. 997 F.2d at 659. Accord State v. Danh, 516 N.W.2d 539 (Minn. 1994); State v. Solano, 724 P.2d 17, 21 (Ariz. 1986). Accordingly, the Ninth Circuit remanded the case for an evidentiary hearing on Caro's motion to withdraw his plea, directing the trial court to "find whether Caro entered his plea because of threats or pressures from his codefendants." 997 F.2d at 660. See United States v. Wheat, 813 F.2d 1399, 1405 (9th Cir. 1987) ("The voluntariness test adequately protects the criminal defendant's due process rights, while at the same time preserving the benefits of the plea bargaining process."), aff'd, 486 U.S. 153 (1988).

Defendant complains that the trial court in this case was similarly uninformed as to the package nature of the plea agreement and therefore failed to properly determine the voluntariness of his individual plea. Br. of App. at 35. Regardless of whether the trial court was aware of the package nature of the deal when defendant initially pled, defendant was afforded a subsequent opportunity to argue the alleged coercive nature of the package plea agreement at the plea withdrawal hearing. Thus defendant has already been afforded the benefit of the recommended relief in Caro: A full evidentiary hearing

concerning the alleged coercion of codefendants.<sup>6</sup> As detailed above, defendant was unable to substantiate his claims of coercion at that hearing. The trial court properly refused to allow withdrawal of the pleas on that ground. See Castello, 724 F.2d at 815 (no abuse of discretion in refusal to allow plea withdrawal following hearing on the matter where defendant failed to establish clear error in trial court's finding that "there were no threats or promises made to defendant at the time she entered her plea").

Defendant's remaining claims of involuntariness on appeal are unsubstantiated and/or inconsequential and similarly fail to demonstrate that the trial court abused its discretion in refusing to allow withdrawal. For example, defendant's claims that he "never did wish to accept any of the plea bargains offered," and that he believed "he stood to gain little by pleading guilty," contradict his testimony at the withdrawal

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<sup>6</sup> The United States Supreme Court has reserved judgment on "the constitutional implications of a prosecutor's offer during plea bargaining of adverse or lenient treatment for some person other than the accused. See Bordenkircher v. Hayes, 434 U.S. 357, 364 n.8 (1978). However, federal circuit court's addressing the issue have concluded that third party threats or promises are not coercive *per se*; "[r]ather they have held that the trial court should make a more careful examination of the voluntariness of a plea when it is induced by such threats or promises." United States v. Castello, 724 F.2d 813 (9th Cir.) (collecting cases), cert. denied, 467 U.S. 1254 (1984). Caro demonstrates that even where the trial court allegedly fails to adequately determine the voluntariness of pleas entered pursuant to a package agreement, the situation can be remedied at a subsequent evidentiary hearing on the matter. 997 F.2d at 660 (holding that, if, after remand, "the district court find's Caro's assertions of codefendant pressure baseless, the error at the Rule 11 stage will be rendered harmless").

hearing. Compare Br. of App. at 32 and (PWTr. 6-7, 10), see Addendum B. As for defendant's claim that he had good reason to fear codefendants, it is inconsistent with his testimony that neither codefendant ever threatened him. Compare Br. of App. at 34 and (PWTr. 10-11), see Addendum B.

Defendant has similarly overstated the testimony of codefendant's Eaton and Land. While defendant claims both codefendants believed they would receive earlier parole dates by accepting the plea agreement, codefendants merely indicated that they thought the plea agreement was in their best interest, and did not specify a reason (PWTr. 12, 15), see Addendum B. Defendant further claims that codefendants and their trial counsel told him that he could not receive a fair trial because the jury would be biased against him. Br. of App. at 33. Only defendant's self-serving testimony supports his assertion. Neither Eaton or Land so testified and their trial counsel was not called as a witness at the withdrawal hearing. Even assuming defendant is correct as to Eaton and Land's reasoning and advice, he has not demonstrated that it had an unfairly coercive effect on his individual decision to accept the plea agreement, particularly where defendant admits that neither codefendant ever threatened him to accept the package deal (PWTr. 10-11), see Addendum B.

#### **B. Failure to Marshal**

Defendant's attempts to cast the evidence in a more favorable light suggests that he is really challenging the

factual basis in support of the trial court's refusal to allow withdrawal of the pleas and its implicit determination of voluntariness. However, an appellant must first marshal the evidence in the light most favorable to the trial court's ruling, and then demonstrate that it is insufficient. State v. Larsen, 828 P.2d 487, 491 (Utah App. 1992) ("Our insistence on compliance with the marshaling requirement is not a case of exalting hypertechnical adherence to form over substance. 'A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research.' (citation omitted)), aff'd, 865 P.2d 1355 (Utah 1993). See also State v. Drobek, 815 P.2d 724, 734 (Utah App. 1991), cert. denied, 836 P.2d 1383 (Utah 1991?); State v. Moosman, 794 P.2d 474, 475-76 (Utah 1990). Based on the analysis in Parts A-B, supra, defendant has failed to comply with this strict requirement. He has thus failed to demonstrate any clear error in the trial court's implicit voluntariness finding. Drobek, 815 P.2d at 735.

In sum, the record of the plea withdrawal hearing is devoid of indication that defendant was threatened or otherwise unlawfully coerced into accepting the package plea agreement. Indeed, defendant admitted that he decided to accept the plea agreement due to his concern about juror bias, particularly where he was to be tried with codefendants. He further denied ever having been threatened by codefendants and failed to substantiate

coercion from any other source. Defendant's alleged internal feelings of coercion do not constitute good cause for withdrawal. This Court should affirm the trial court's ruling.

CONCLUSION

Based on the foregoing, the Court should determine that defendant affirmatively waived his allegation of a rule 11 violation. The Court should further determine that defendant's claims of involuntariness are unsubstantiated and thus the trial court did not abuse its discretion in refusing to allow withdrawal of the pleas.

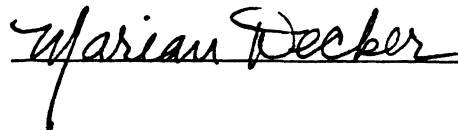
RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of February, 1995.

JAN GRAHAM  
Attorney General

  
MARIAN DECKER  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to JEFFERY P. GLEAVE, attorney for appellant, 195 North 100 East, #205, Richfield, Utah 84701, this 13<sup>th</sup> day of February, 1995.



ADDENDA



## ADDENDUM A

FILED  
SAN FRANCISCO  
JUN 10 1964  
BY *C. Gibson* DEPUTY

STATE OF UTAH,  
  
Plaintiff,  
  
vs.  
  
PHILLIP J. BOLIN, MICHAEL A.  
BRADLEY, JEFFREY C. EATON,  
MICHAEL A. LAND, and DAVID L.  
MILLS,  
  
Defendants.

MOTION TO WITHDRAW  
GUILTY PLEAS

Case No. 931600154

JUDGE DON V. TIBBS

As a basis for this Motion, it is the Defendant's position that good cause exists to permit withdrawal of his guilty pleas. He alleges that his pleas were not voluntary but were entered to avoid retaliation from his Co-Defendants in this case. Specifically, there were three Co-Defendants remaining on March 21, 1994 who had not previously plead guilty. The Sanpete County

State v. Bolin, et al.,  
Motion to Withdraw Guilty Pleas  
Page 2


Attorney offered to reduce the criminal charges facing these remaining Co-Defendants in a return for guilty pleas.

The offers were conveyed to the Co-Defendants but not all were willing to accept the offered agreement. Subsequently, the Sanpete County Attorney placed a restriction on the offer that if all of the Co-Defendants did not accept the offer, then none of them would be permitted to accept it individually.

The Defendant felt that because of the restriction placed on the offered agreement, if he had elected not to accept, then he would have been subjected to physical and emotional retaliation from the Co-Defendants, since they would not have been permitted to accept the plea bargain without his concurrence. (The Defendant executed an affidavit consistent with these statements and is attached as Exhibit A).

WHEREFORE, the Defendant requests that the Motion to Withdraw Guilty Pleas be granted and permit the Defendant to be tried by a jury for the offenses charged against him.

DATED this 18<sup>th</sup> day of April, 1994.

  
\_\_\_\_\_  
JEFFERY P. GLEAVE  
Attorney for Defendant  
David L. Mills

JEFFERY P. GLEAVE (6390)  
HUNT & GLEAVE  
Attorney for Defendant  
195 North 100 East, Suite 205  
Richfield, Utah 84701  
(801) 896-4424

---

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY  
STATE OF UTAH

---

STATE OF UTAH,	:	
	:	
Plaintiff,	:	<b>AFFIDAVIT OF</b>
	:	<b>DAVID L. MILLS</b>
vs.	:	
	:	
PHILLIP J. BOLIN, MICHAEL A.	:	
BRADLEY, JEFFREY C. EATON,	:	
MICHAEL A. LAND, and DAVID L.	:	Case No. 931600154
MILLS,	:	
	:	
Defendant.	:	JUDGE DON V. TIBBS

---

STATE OF UTAH            )  
                          ) ss.  
COUNTY OF SANPETE    )

David L. Mills, after being duly sworn, states the following:

- 1) I am one of the Defendants in the above-entitled matter.
- 2) I involuntarily plead guilty to charges of Attempted Riot and Attempt to Injure a Jail, on March 21, 1994.
- 3) The reasons my pleas were involuntary are:
  - a. The Codefendants were offered as a group a plea bargain that by its terms, could only be accepted unanimously by all of the Codefendants in this case; and
  - b. I felt under extreme pressure from the County

State v. Bolin, et al.,  
Affidavit of David L. Mills  
Page 2

Attorney to accept this bargain since it was my understanding that he would not permit me to go to trial on the charges alone; and

c. If I had not accepted the plea bargain, I could have been exposed to physical and emotional retaliation from one of my Codefendants who desired to accept the plea bargain.

DATED this 18<sup>th</sup> day of April, 1994.

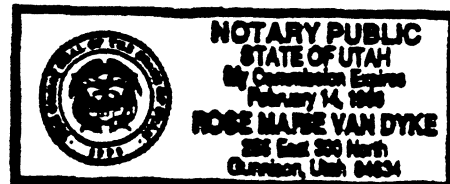
David L. Mills  
David L. Mills  
Affiant

Jeffery P. Gleave  
JEFFERY P. GLEAVE  
Attorney for Defendant  
195 North 100 East, Suite 205  
Richfield, Utah 84701

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of April, 1994.

Rose Marie Van Dyke  
NOTARY PUBLIC

Residing at: Sanpete Co.  
My Commission Expires: 2-14-96



JEFFERY P. GLEAVE (6390)  
HUNT & GLEAVE  
Attorney for Defendant  
195 North 100 East, Suite 205  
Richfield, Utah 84701  
(801) 896-4424

FILED  
2004-03-21  
CLERK OF DISTRICT COURT  
SANPETE COUNTY, UTAH  
By C. Hansen

---

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY  
STATE OF UTAH

---

STATE OF UTAH,	:	
	:	
Plaintiff,	:	<b>MEMORANDUM IN SUPPORT OF</b>
	:	<b>MOTION TO WITHDRAW</b>
	:	<b>GUILTY PLEAS</b>
vs.	:	
	:	
PHILLIP J. BOLIN, MICHAEL A.	:	
BRADLEY, JEFFREY C. EATON,	:	
MICHAEL A. LAND, and DAVID L.	:	Case No. 931600154
MILLS,	:	
	:	
Defendants.	:	JUDGE DON V. TIBBS

---

The Defendant, David L. Mills, by and through his attorney, Jeffery P. Gleave, hereby submits the following memorandum in support of his Motion to Withdraw Guilty Pleas.

**FACTS**

The Defendant along with four Codefendants were charged in an information with various criminal violations stemming from a disturbance at Central Utah Correctional Facility. Prior to the trial date, Phillip J. Bolin and Michael A. Bradley accepted plea bargains from the Sanpete County Attorney. The remaining three Codefendants did not accept the plea bargains which were offered but prepared to undergo a jury trial to determine their guilt or innocence.

On March 21, 1994, the day the scheduled trial was to begin,

State v. Bolin, et al.,  
Memorandum in support of motion  
Page 2

and after the jury venire was qualified, Judge Don V. Tibbs heard argument in his chambers concerning a Motion for a Protective Order filed by the Attorney General's Office of the State of Utah. After ruling on this motion, the Sanpete County Attorney offered a plea bargain that was substantially "better" than the original offer to the Defendants David L. Mills, Michael A. Land, and Jeffrey C. Eaton.

This offer was not accepted by Michael A Land or David L Mills. Additional negotiations were undertaken by the Defendant's attorneys and the Sanpete County Attorney. While I (Jeffery P. Gleave) was discussing with the Defendant, David L. Mills, the modifications Mr. Blackham had offered to him, Mr. Douglas Neeley, the attorney for Defendants Eaton and Land returned to the room and announced that Mr. Blackham had stated that either all of the Defendants were required to accept the offered plea bargain or none of them would be permitted to accept it.

The Defendant Jeffrey C. Eaton was facing trial on Possession of a Dangerous Weapon at a Correctional Facility, a second degree felony and Riot, a third degree felony. He was very desirous of accepting the plea bargain and pleading to two amended Class A misdemeanor counts and kept "encouraging" Mills and Land to accept the offered plea bargain.

Eventually, all the Defendants plead guilty to the counts in the amended information on March 21, 1994.

#### ARGUMENT

A portion of the guarantees granted to all accused persons in criminal prosecutions, by Article I Section 12 of the Constitution of Utah, includes: the right to appear and defend

State v. Bolin, et al.,  
Memorandum in support of motion  
Page 3

in person and by counsel, to testify in his own defense and the right to have a speedy trial by an impartial jury. It is well understood that the defendant may waive these rights if certain requirements are met. An important requirement that must be satisfied is that the waiver must be voluntary.

To withdraw a guilty plea defendant must show good cause and with leave of the court. U.C.A. 77-13-6(2)(a) (1953 as amended). Good cause exists where the plea was entered involuntarily. State v. Forsyth, 560 P.2d 337, 338 (Utah 1977). In Forsyth, the Utah Supreme Court stated, "we are in full agreement with the proposition that for a plea of guilty to be valid it must appear that the accused had a clear understanding of the charge and without undue influence, coercion, or improper inducement voluntarily entered such plea." Id. at 338-39.

In the instant case, the Defendant was subjected to undue influence and coercion by his Codefendants and the Sanpete County Attorney because if he had stated he did not want to plead guilty to the amended information, the other Codefendants who desired to accept the "deal" would not have been allowed to do so.

In this case Defendant Mills, had made a Motion to Sever the Defendants for purposes of trial. However, this Motion had been denied and he was involuntarily placed in a position where he would stand trial not alone but with several other Defendants which he felt was not in his best interests. Furthermore, on March 21, 1994, he was placed in position where he was required to acquiesce in the offered bargain or suffer the consequences from his fellow Codefendants.

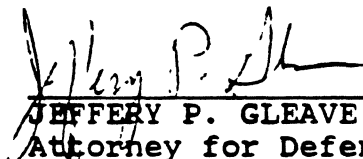
Therefore, it seems apparent that by requiring the Defendants to collectively accept the offered plea bargain and if



State v. Bolin, et al.,  
Memorandum in support of motion  
Page 3

not, prohibiting them from accepting it individually, that there was coercion and undue influence exerted on Defendant Mills to plead guilty to reduced charges. As stated in Forsyth, Id., good cause exists to withdraw the plea if it was entered with either undue influence or coercion which would render the plea involuntary. Here it seems that both undue influence and coercion are present which makes the voluntariness of the plea doubly flawed.

DATED this 18<sup>th</sup> day of April, 1994.

  
\_\_\_\_\_  
JEFFERY P. GLEAVE  
Attorney for Defendant  
David L. Mills

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing  
MOTION TO WITHDRAW GUILTY PLEAS, MEMORANDUM IN SUPPORT OF MOTION TO  
WITHDRAW GUILTY PLEAS and AFFIDAVIT OF DAVID L. MILLS was hand  
delivered to the following, this 18<sup>th</sup> day of April, 1994.

Ross C. Blackham  
160 North Main  
Manti, Utah 84642

John P. Lih  
JL

## ADDENDUM B

ORIGINAL

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE  
COUNTY OF SANPETE, STATE OF UTAH

STATE OF UTAH,	)	CASE NO. 931600154
	)	
Plaintiff,	)	WITHDRAWAL OF PLEA
	)	
VS.	)	
	)	TRANSCRIPT OF PROCEEDINGS
DAVID L. MILLS,	)	
	)	
Defendant.	)	

BE IT REMEMBERED that on the 4th day of May 1994,  
commencing at 10:00 a.m., that the above entitled matter  
came on regularly before the Honorable DON V. TIBBS, Judge  
of the Sixth Judicial District Court in and for the County  
of Sanpete, State of Utah, at the Sanpete County Courthouse,  
Manti, Utah;

That at the conclusion of the above entitled  
proceedings JEFFREY P. GLEAVE, Counsel for defendant in the  
above entitled action, requested a copy of the TRANSCRIPT OF  
PROCEEDINGS and that TRANSCRIPT OF PROCEEDINGS appears  
herein as follows:

J. M. LIDDELL, CSR, RPR  
SIXTH JUDICIAL DISTRICT REPORTER  
SANPETE COUNTY COURTHOUSE  
MANTI, UTAH 84642

APPEARANCES

For the Plaintiff: ROSS C. BLACKHAM  
 SANPETE COUNTY ATTORNEY  
 Sanpete County Courthouse  
 160 North Main Street  
 Manti, UT 84642

For the Defendant: JEFFERY P. GLEAVE  
 ATTORNEY AT LAW  
 195 North 100 East, #205  
 Richfield, UT 84701

--ooOoo--

INDEXPAGE NO.

TRANSCRIPT OF PROCEEDINGS . . . . .	3
MOTION TO WITHDRAW PLEA . . . . .	3

DEFENDANT'S WITNESSES

DAVID L. MILLS	
Direct Examination by Mr. Gleave . . . . .	4
Cross Examination by Mr. Blackham . . . . .	8
JEFFERY EATON	
Direct Examination by Mr. Gleave . . . . .	11, 13
Cross Examination by Mr. Blackham . . . . .	12
MICHAEL LAND	
Direct Examination by Mr. Gleave . . . . .	13
Cross Examination by Mr. Blackham . . . . .	15
COURT ORDER AND FINDINGS . . . . .	17

--ooOoo--

10:00 A.M.  
4TH MAY 1994

TRANSCRIPT OF PROCEEDINGS

THE COURT: The next matter is 0154 the State  
of Utah vs. David L. Mills, Mr. Blackham for the state of  
Utah and Mr. Jeffery P. Gleave for the defendant.

The record should indicate the defendant, Mr.  
Mills, is present, isn't he?

MR. GLEAVE: Yes.

THE COURT: Mr. Mills is present, personally.

MOTION TO WITHDRAW PLEA

THE COURT: The matter is before the Court on a  
motion to withdraw plea. I have--for the purpose of the  
record, I have examined the plea, the memorandum filed in  
connection with the case. The record should also indicate  
that I'm the Judge that took the pleas.

All right. I'll hear you.

MR. GLEAVE: Your Honor, we we're simply claiming  
that Mr. Mills' plea was involuntarily to the charges which  
were relevant at the prison on August 9th. We're prepared  
to present testimony, if the Court feels is necessary.

THE COURT: It's not a matter of what I feel,  
counsel. I assume you're trying to make a record.

MR. GLEAVE: Yes.

I believe it's the State's position that strict  
compliance with Rule 11 of the UTAH RULES OF CRIMINAL

1 PROCEDURE were followed in that the Court found that the  
2 plea was in fact, voluntary. At this time, Your Honor, I  
3 would like to call David Mills.

4 DEFENDANT'S WITNESSES

5 THE COURT: All right. Just swear Mr. Mills. It  
6 won't be necessary for you to raise your hands.

7 [WITNESS SWORN BY THE CLERK IN OPEN COURT]

8 DAVID L. MILLS, called and sworn at the instance of  
9 defendant, himself, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JEFFERY:

12 1 Q Mr. Mills, would you please state your name.

13 A David L. Mills.

14 2 Q How old are you?

15 A 21.

16 3 Q And where do you live, David?

17 A In the Central Utah Correctional Facility.

18 4 Q And you're a prisoner of the facility?

19 A Yes.

20 5 Q Do you have a parole date?

21 A No.

22 6 Q How long do you expect to be in prison, David?

23 A A long time.

24 7 Q More than five years?

25 A Yes.

1     1     Q       Okay. On March 21st, do you recall March 21st,  
2 the day we were supposed to go to trial?

3               THE COURT: Counsel, are you just gonna go back  
4 and lay a record of what actually happened by the record,  
5 because I was there. It's all shown by the minutes. The  
6 record would show all this.

7               MR. GLEAVE: No, Your Honor.

8               THE COURT: Let's go into something that the  
9 record doesn't show, because I've got a lot of things to do  
10 today and--

11              MR. GLEAVE: Um-hm.

12     2     Q       On March 21st you were presented with a plea  
13 bargain, which was conveyed to you by me; is that correct?

14              WITNESS:     A       Yes.

15     3     Q       What was that, plea bargain?

16              A       That I was to agree to plead guilty to an  
17 amended--to amended charges that two felonies would be  
18 dismissed.

19     4     Q       Was there anything else concerning a plea  
20 bargain, whether you could accept that individually?

21              A       I had to--I couldn't--if I had--if I didn't want  
22 to take it, then my co-defendants couldn't take it either.  
23 We had to accept it as a group.

24     5     Q       Were your co-defendants offered the same plea  
25 bargain?



1 A I was told, yeah, yes.

2 1 Q Were you willing to accept that plea bargain?

3 A No. Not at first I wasn't, no.

4 2 Q Describe why you eventually accepted it?

5 A Well, it began with, you know, I was told that  
6 members of the--well, it started with the jury selection  
7 with a lot of the members of the jury and their relations to  
8 officers that I had come in contact with in the prison and  
9 knowing that these people--I didn't feel that I would get a  
10 fair jury trial because they wouldn't be impartial with me  
11 having contact with their spouses or brothers or whatever,  
12 whatever relation they were to them, and just the pressure  
13 from the Court attorney making--saying that we all had to  
14 take it at one thing and me with the possibility of  
15 retaliation from other inmates if I decided not to take it.  
16 I also had--I was also told that members of the jury were  
17 prejudiced against me and I just really didn't--I didn't  
18 feel that I would get a fair trial. I was pressured and  
19 coerced into accepting it.

20 3 Q Who told you that members of the jury were  
21 prejudiced against you?

22 A Mr. Neeley.

23 4 Q What did Mr. Neeley say?

24 A He told me--to put it plainly, he told me that  
25 members of the jury that he knew personally would just as

1 soon hang me as look at me. And I don't know who they were,  
2 so I there was no way of me striking them from the jury  
3 selection.

4 1 Q Why did you eventually decide to accept the plea  
5 bargain?

6 A Because of the--I feared retaliation from other  
7 sources, so I just, you know, I--

8 2 Q Did you attempt to plead no contest?

9 A Yes.

10 3 Q What happened?

11 A I was told that it wasn't acceptable, that I  
12 couldn't.

13 4 Q Do you recall--well, what were your feelings  
14 about being tried with your co-defendants?

15 A I was against it from the start

16 MR. BLACKHAM: I object to what his feelings were  
17 about that, Your Honor.

18 THE COURT: The objection is sustained.

19 WITNESS: A Well, I believe it was--

20 THE COURT: The objection is sustained.

21 MR. GLEAVE: Q Okay. When you entered  
22 your plea, do you remember the Judge asking you if your plea  
23 was voluntary?

24 WITNESS: A No. I don't remember. But he  
25 could have said it. I don't remember him, though.

1 1 Q Okay. How would your co-defendants have known  
2 you rejected the plea?

3 A When we went back out, if I would have said no,  
4 it would have been obvious. When we went back out to plea,  
5 if I would have said no, you know, they would have been  
6 standing right there. They would have known when I said no.

7 2 Q They would have heard you?

8 A Yeah.

9 3 Q Why didn't you tell the Judge your feeling it was  
10 involuntarily?

11 A We were all sitting right there. Everybody was  
12 just like it is right now. I mean if I would have said  
13 that, it would have been just the same as me saying no  
14 anyway.

15 4 Q Your impression of the plea, did you benefit from  
16 accepting the plea?

17 A No. No. I don't feel that I did.

18 5 Q Will you get out of prison any earlier, in your  
19 opinion?

20 A No. Without question.

21 MR. GLEAVE: No more, Your Honor.

22 THE COURT: Mr. Blackham?

23 CROSS EXAMINATION

24 BY MR. BLACKHAM:

25 6 Q Mr. Mills, did you tell your lawyer, Mr. Gleave

1 at the time, to express ever--during the morning proceedings  
2 down there, did you ever ask your lawyer to express these  
3 concerns to the prosecutor?

4 A I told--I told him that I wanted to plead no  
5 contest, because of the--yeah, yeah. Yes, I told him this,  
6 because it wasn't--I wasn't--I didn't want to plead guilty.  
7 But knowing that--

8 1 Q Wait a minute. You're kind of getting away from  
9 my question.

10 Did you express these concerns that you've just  
11 testified about to your lawyer that morning?

12 A Yeah.

13 2 Q Did you tell him--did you tell him that you had  
14 been threatened or put in fear of retaliation in any manner?

15 A No.

16 3 Q As a matter of fact, it was Mr. Land and Mr.  
17 Eaton who were in the proceedings with you that morning;  
18 correct?

19 A Yes.

20 4 Q And isn't it true, Mr. Miles, that in fact,  
21 neither one of those guys ever threatened you that morning?

22 A No.

23 5 Q They did not threaten you; correct?

24 A Not in the way. Well, it depends on what you're  
25 trying to say. I don't think I understand what you are

1 trial to say.

2 1 Q Let me clarify.

3 A They didn't say--no--"We are gonna get you." No.  
4 they didn't say that.

5 2 Q Okay. That's what I'm asking. Thank you.

6 Did you ever express to the prosecutor or to the  
7 Judge that you were under some fear or that you had been  
8 threatened in any way by anybody that morning?

9 A No.

10 MR. BLACKHAM: That's all, Your Honor.

11 THE COURT: Anything else, Mr. Gleave?

12 MR. GLEAVE: One further question Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. GLEAVE:

15 3 Q What--why did you feel that there would be  
16 retaliation, if you rejected the plea?

17 A Because I knew. It's not like something that has  
18 to be told out to you. you know, in those exact words. It's  
19 just it's like an unsaid thing. You just--just you know.  
20 You just know.

21 4 Q And you knew that if you rejected that plea that  
22 there would be--

23 A Yeah. See, there was talk about it. But not in  
24 me exactly, but just whoever didn't go along with it; do you  
25 know what I mean?

1           So that's why--okay. So if I was to say did they  
2 threaten me?

3           No. Not me, as in saying David Mills. But it's  
4 in a general way it's just whoever didn't go along with it.

5           MR. BLACKHAM: No questions, Your Honor.

6           THE COURT: Call your next witness.

7           MR. GLEAVE: Jeffery Eaton.

8           THE COURT: All right.

9           THE COURT: Will you swear Mr. Eaton. You don't  
10 have to raise your hand, Mr. Eaton.

11           [WITNESS SWORN BY THE CLERK IN OPEN COURT]

12 JEFFERY EATON, called and sworn at the instance of  
13 defendant, testified as follows:

14                           DIRECT EXAMINATION

15           BY MR. GLEAVE:

16       1     Q     Jeff, where do you live?

17       A     Central Utah Correctional Facility.

18           MR. GLEAVE: Your Honor, I feel it's necessary  
19 just a couple of direct questions to set the background.

20       2     Q     When was your parole date?

21           WITNESS:     A     I was scheduled to parole  
22 August 10th, 1993.

23       3     Q     On March 21st, if you accepted the plea bargain,  
24 when did you feel that you would be released from prison?

25       A     Anywhere from August of '94 to possibly

1 January/February of '95.

2 1 Q What charges were you going to be tried on?

3 A A second degree felony of possession of a weapon  
4 and third degree felony of rioting.

5 2 Q And if you had proceeded with trial and been  
6 found guilty, when did you expect to be released from prison  
7 on those charges?

8 A Five to eight years from now.

9 3 Q Was it in your interest to accept the plea  
10 bargain?

11 A Yes.

12 4 Q Did you understand the plea bargain that if the  
13 co-defendants didn't accept it, you would not be able to  
14 accept it?

15 A Yes.

16 MR. GLEAVE: No further questions.

17 CROSS EXAMINATION

18 BY MR. BLACKHAM:

19 5 Q Mr. Eaton, Mr. Mills says that you never directly  
20 threatened him or threatened him with bodily injury,  
21 retaliation in any manner; is that correct?

22 A Yes.

23 MR. BLACKHAM: Thank you.

24 THE COURT: Anything else?

25 MR. BLACKHAM: No, Your Honor.

1 THE COURT: Counsel?

2 REDIRECT EXAMINATION

3 BY MR. GLEAVE:

4 1 Q One other question. Mr. Eaton--

5 THE COURT: I think you're through with Mr.  
6 Eaton, counsel.

7 MR. GLEAVE: Okay.

8 THE COURT: Well, go ahead. Ask your question.

9 MR. GLEAVE: Q To threaten someone in  
10 prison does a person have to verbally threaten them?

11 A No. There's unsaid rules in a prison  
12 environment. There's just things that don't even need to be  
13 said, but things that all prisoners know automatically.

14 MR. GLEAVE: That's all.

15 MR. BLACKHAM: No further questions, Your Honor.

16 THE COURT: Call your next witness.

17 MR. GLEAVE: Michael Land.

18 THE COURT: Will you please swear Mr. Land.

19 [witness sworn by the clerk in open court]

20 MICHAEL LAND, called and sworn at the instance of  
21 defendant, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GLEAVE:

24 2 Q Now, Michael, where do you live?

25 A Um, I'm now housed in Draper, Utah, Unit 2.



1 1 Q Did you have a parole date?

2 A Yes. I was supposed to be released on August the  
3 10th, 1993.

4 2 Q Did you feel it was in your best interest to  
5 accept a plea bargain?

6 A Ah, not at first. We was all three of us was  
7 against it. Most of us--most of us inmates were against  
8 taking a plea bargain and it was to our best interest to  
9 stick together. It was to our best interest to stick  
10 together, you know, for a lot of inmates were pressured  
11 into sticking together, you know, because it was just pure  
12 pressure. But when it came down to it and they offered to  
13 plea bargain, I think Mr. Mills was pressured into it  
14 because he wanted to--me and him didn't want to at all. We  
15 didn't want to accept a plea bargain. But Mr. Eaton here,  
16 he had a different opinion, you know, so we figured well, if  
17 we all go to trial, then we're all gonna be found guilty.  
18 After we looked at--after we went to the roster sheet and we  
19 realized that everybody was mostly related we felt this  
20 community would be prejudiced towards us.

21 3 Q Okay. If you had gone to trial and been found  
22 guilty, when did you expect to be released from prison?

23 A Anywhere from 5 to 10 years from now.

24 4 Q If you accepted the plea bargain, when did you  
25 expect to be released?

1           A       Anywhere from August '94 to December '94--or  
2 February '95.

3       1    Q       Considerably short period of time?

4           A       A short period of time.

5                   MR. GLEAVE: That's all, Your Honor.

6                               CROSS EXAMINATION

7                   BY MR. BLACKHAM:

8       2    Q       Mr. Land, Mr. Mills said that you never directly  
9 threatened him or threatened retaliation against him in  
10 order to get this plea from him; is that also correct?

11           A       No. I did not. But like I said,--

12       3    Q       No. Wait. Just answer.

13                   You did not directly threaten him; is that  
14 correct?

15           A       No. I did not.

16                   MR. BLACKHAM: That's all.

17                   MR. GLEAVE: No further witnesses, Your Honor.

18                   THE COURT: Anything else. Mr. Blackham?

19                   MR. BLACKHAM: No, Your Honor. I intend to ask  
20 the Court to make a finding, as to the proceedings that day,  
21 and I know the Court doesn't want to go through that, but as  
22 long as that's--

23                   THE COURT: I don't want to go through what?

24                   MR. BLACKHAM: I think it's important that the  
25 record reflect, Your Honor, that the Court went through

1 questions in proceedings that day and I don't know whether  
2 you can find that without further testimony about it or not.  
3 I gather, from the comments by Mr. Gleave, that you were  
4 aware of the proceedings that you conducted them. But I  
5 don't intend to call witnesses on any of the other issues.

6 THE COURT: So you rest?

7 MR. BLACKHAM: Yes.

8 THE COURT: You rest?

9 MR. GLEAVE: One other item, Your Honor. At this  
10 time we do not wish to address a strict compliance  
11 requirements with the Rule 11 of the UTAH RULES OF  
12 CRIMINAL PROCEDURE. However, we would like to reserve that  
13 procedure, if this ruling is is adverse to us today.

14 THE COURT: Adverse what issue? Tell me what  
15 you're talking about. Get specific.

16 You claim I didn't comply with Rule 11?

17 MR. GLEAVE: I don't want to claim that right  
18 now, but I would like to reserve that, Your Honor.

19 THE COURT: Well, you were present. Didn't I ask  
20 you at one time if there was any reason why I should not  
21 sentence them?

22 MR. GLEAVE: Yes, you did, Your Honor.

23 THE COURT: You told me there was no reason;  
24 isn't that what you told me?

25 MR. GLEAVE: Yes, I believe I did.

1 THE COURT: Now you don't want to be bound by  
2 that.

3 MR. GLEAVE: No. I don't want to be bound by  
4 whether--

5 THE COURT: All right. Anything else?

6 MR. GLEAVE: No.

7 THE COURT: All right.

8 Do you want to argue the matter?

9 MR. BLACKHAM: I submit it, Your Honor. I  
10 believe there's been compliance with Rule 11. I don't  
11 believe there's anything you've heard today to present  
12 evidence of threats, retaliation, promises in any manner to  
13 invalidate the plea.

14 COURT ORDER AND FINDINGS

15 THE COURT: The motion to withdraw the plea is  
16 denied. I don't see any than reason that I should allow the  
17 plea to be withdrawn.

18 I advised them of their constitutional rights.  
19 In my opinion that was voluntarily and the record should  
20 indicate that I sat down there and waited with a jury  
21 paneled, ready to go, for nearly four or five hours while in  
22 this matter they went over and advised all the rights. I  
23 think this is just a dilatory procedure for the purpose of  
24 causing the Court problems and taking the public's time.  
25 The motion is denied.

1 Thank you.

2 MR. GLEAVE: Okay.

3 [WHEREUPON THE ABOVE ENTITLED PROCEEDINGS WERE  
4 COMPLETED]

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1 STATE OF UTAH )  
 ) SS.  
 2 COUNTY OF SANPETE )

3 REPORTER'S CERTIFICATE

4 I, JOSEPH M. LIDDELL, CSR, RPR, Official Reporter  
 5 for the Sixth Judicial District Court, County of Sanpete,  
 6 State of Utah, hereby certify that I did at the time, date  
 7 and place as set forth herein report the proceedings had in  
 8 stenographic notes; that the foregoing pages, numbered 1 -  
 9 18, inclusive, constitute a true, correct and complete  
 10 transcript of my notes as reduced to typewritten form by me  
 11 or under my direction.

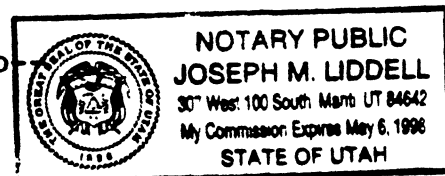
12 I further certify that I am not an agent, attorney  
 13 or counsel for any of the parties hereto, nor am I  
 14 interested in the outcome thereof.

15 IN WITNESS WHEREOF I have subscribed my name and  
 16 affixed my seal this 2nd day of July 1994.

17  
 18   
 19 JOSEPH M. LIDDELL, CSR, RPR  
 20 Notary Public in and for the  
 State of Utah  
 [License No. 83-106769-7801]

21 My Commission Expires:  
 22 5-6-98

23 --ooOoo--



## ADDENDUM C

ROSS C. BLACKHAM (#0357)  
Sanpete County Attorney  
Sanpete County Courthouse  
160 North Main  
Manti, Utah 84642  
Telephone: (801) 835-6381

*C. Larson*

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY  
STATE OF UTAH

---

THE STATE OF UTAH,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER DENYING DAVID MILL'S
	)	MOTION TO WITHDRAW
DAVID L. MILLS,	)	GUILTY PLEA
	)	Case No. 931600154
Defendant.	)	Judge Don V. Tibbs

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The above case having come before the Court on May 4, 1994 on Defendant David Mill's Motion to Withdraw his Guilty Plea. Defendant was personally present and represented by his attorney Jeffery P. Gleave. The State was represented by Ross C. Blackham, Sanpete County Attorney. The Court having heard testimony from witnesses now enters the following findings and order:

1) That on March 21, 1994, the Defendant David L. Mills appeared before the Court and entered a guilty plea to Attempted Riot, a Class A Misdemeanor and Attempt to Injure a Jail, a Class A Misdemeanor.

2) That Defendant, at the time, was personally present and represented by his attorney Jeffery P. Gleave.



3) That prior to the entry of the plea that the Defendant and his attorney had an excess of 2 hours to discuss a plea bargain with the State in the case.

4) That at the time of accepting the plea the Court, on the record, and in the presence of the Defendant and his attorney advised him of his rights under Rule 11 of the Utah Rules of Criminal Procedure and specifically asked the Defendant and his attorney if there was any reason why he should not accept a plea. Defendants counsel and Defendant affirmatively stated that there was no reason.

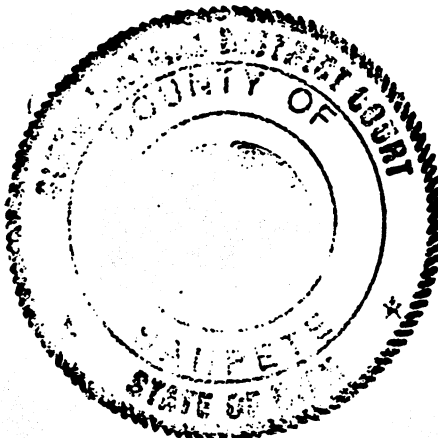
5) That the Court finds that there were not any threats made to the Defendant from co-defendants in this case in order to obtain his plea.

6) From the foregoing findings the Court fails to find good cause for the Motion to Withdraw Defendant's Guilty Plea and the Motion is hereby denied.

DATED this 10<sup>th</sup> day of May, 1994.

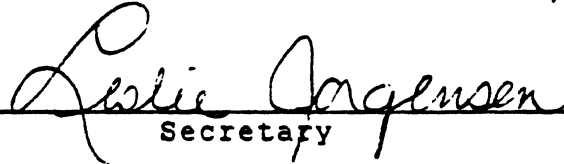
**BY THE COURT:**

**DON V. TIBBS.**  
**DISTRICT COURT JUDGE**



MAILING CERTIFICATE

I hereby certify that I have mailed a true and correct copy of the above and foregoing instrument to the Defendant's attorney, Jeffery P. Gleave at HUNT AND GLEAVE 195 North 100 East, Suite 205, Richfield, Utah 84701, postage prepaid this 11 day of ~~April~~<sup>May</sup>, 1994.

  
Secretary

## ADDENDUM D

**Utah R. Crim. Pro. 11(e)**

The court may refuse to accept a plea of guilty, . . . and may not accept the plea until the court has found:

(1) if the defendant is not represented by counsel, he or she has knowingly waived the right to counsel and does not desire counsel;

(2) the plea is voluntarily made;

(3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

(4) the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements;

(5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

(7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and

(8) the defendant has been advised that the right of appeal is limited.